

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 98-0103 AGI

Individual Income Tax

Calendar Years: 1993, 1994, & 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issue.

ISSUES

I. Individual Income Tax - Imposition

Authority: U.S. CONST. amend. XIV; IND. CONST. Of 1851, art. X Sec.8; 26 U.S.C. Sec. 61; IC 6-3-1-1; IC 6-3-2-1; IC 6-3-1-12; 26 U.S.C. Sec. 62

The taxpayer protests the constitutionality of the imposition of Indiana Individual Income Tax on his wages.

STATEMENT OF FACTS

The taxpayer is an Indiana resident and filed tax returns for 1993, 1994, and 1995, and paid all of the tax except for a small amount each year. The Department subsequently issued billings for each of the years for the additional tax. The taxpayer protests the entire Indiana individual income tax for each of the years. The taxpayer requests a refund for the total amount of individual income tax for each of the years.

I. Individual Income Tax - Imposition

DISCUSSION

The taxpayer is protesting the constitutionality of the Indiana individual income tax. The taxpayer's argument revolves around the definition of "gross income" as defined in the Federal Code. The "gross income" discussed is the "gross income" defined in Sec.61 of the U.S.C. which is the gross receipts used to compute the adjusted gross income in Sec. 62 of the U.S.C. Indiana follows this definition for "gross income" which is used to tax individual income tax as defined in IC 6-3. The "gross income" discussed in this Letter of Finding is not the "gross income" defined in IC 6-2.1 which is a tax on the gross receipts for corporations.

The taxpayer argues that the semantics of the 16th amendment of the U.S. Constitution and Sec 22(a) of the 1939 Internal Revenue Service Code state that only the income and not the source of the income is subject to income tax.

First, the taxpayer states that Sec. 22(a) of the 1939 Internal Revenue Service Code is the same as Sec. 61 of the current Internal Revenue Service Code. The taxpayer cites *C.I.R. v. Glenshaw Glass Co.*, 75 S. Ct. a73, 348 US 426 (1955) which states, "... Nor does the 1954 Code's legislative history, with its reiteration of the proposition that statutory gross income is 'all inclusive', give support to the respondent's position. The definition of gross income has been simplified, but no effect upon its broad scope was intended." The Department agrees that gross income as defined in the 1939 Code is the same as the definition of gross income in the current Code. The Department also points out that the *Glenshaw* court case states that gross income is all inclusive. This means that both capital income and wages are subject to income tax.

Second, the taxpayer erroneously argues that *Brushaber v. Union Pacific Railroad Co.*, (240 US 1)(1916) and *Eisner v. Macomber* (252 US 189)(1920) state that only the income and not the source of the income is taxable. The taxpayer argues labor is a source of income where income results to an employer when the employer pays an employee to produce a good or service and the sale of the good or service results in a profit.

The Department cites *James W. Thomas v. Indiana Department of State Revenue*, Indiana Tax Court, No. 49T10-9512-TA-00132 (January 3, 1997) "... monetary payments made in exchange for labor are clearly severed from labor and received or drawn by the recipient for his separate use, benefit, and disposal." Thus, wages are income and separate from the source of the income (labor). Thus, wages are subject to income tax.

To continue, Sec. 61(a)(1) of the Internal Revenue Code states, "... gross income means all income from whatever source derived, including the following items; ... compensation for services, including fees, commissions, fringe benefits, and similar items; ..." Clearly, wages are income and subject to tax.

In *Jerry D. Richey v. Indiana Department of State Revenue*, Indiana Tax Court, No. 82T10-9206-TA-00036, (June 3, 1994), the court stated, "The constitutional legitimacy of the general assembly's decision to tax income is beyond dispute. The right to tax is a crucial attribute of sovereignty. See *McCullough v. Maryland* (1819), 17 US (4 Wheat) 316, 428, 4 L.Ed. 579, 607. The power to tax rests solely with the legislature, and is subject only to

constitutional limitations, *Bielski v. Zorn* (1994), Ind. Tax, 627 N.E. 2d 880, 884. Moreover, Article X, Section 8 of the Indiana Constitution provides: ‘The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law.’ ” Here, the court points out that the Indiana General Assembly has the right to tax income which includes wages.

The 16th amendment of the U.S. Constitution states Congress has the power to enact laws taxing income regardless of whether the source is corporate or individual. Thus, wages are subject to income tax.

To conclude, Sec. 61(a)(1) of the current IRS Code, *Richey*, and the 16th amendment of the U.S. Constitution all state that wages are income and subject to adjusted gross income tax.

FINDING

The taxpayer’s protest is denied. Wages are income earned by an individual performing labor and are subject to adjusted gross income tax.